STATE OF MICHIGAN

COURT OF APPEALS

In re HYATT, Minor.

UNPUBLISHED
August 4, 2015

No. 325213
Lake Circuit Court
Family Division
LC No. 13-001522-NA

Before: WILDER, P.J., and SHAPIRO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent-father appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(*i*) and (c)(*ii*). We reverse and remand.

Respondent argues that reversal is required because the trial court never adjudicated him as an unfit parent in violation of *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014).[1] Generally, at the adjudicative phase of a child protective proceeding, a trial court must determine whether it can take jurisdiction over the child. *Id*. at 404; MCL 712A.2(b). "When the petition contains allegations of abuse and neglect against a parent, MCL 712A.2(b)(1), and those allegations are proved by plea or [by a preponderance of the evidence] at the [adjudication] trial, the adjudicated parent is unfit." *In re Kanjia*, 308 Mich App 660; ___ NW2d ___ (2014), slip op at 2, quoting *Sanders*, 495 Mich at 405. In *Sanders*, 495 Mich at 422, the Supreme Court held that the "one-parent doctrine" violated procedural due process. The Court described the doctrine as follows:

> In simpler terms, the one-parent doctrine permits courts to obtain jurisdiction over a child on the basis of the adjudication of either parent and then proceed to the dispositional phase with respect to both parents. The doctrine thus eliminates the petitioner's obligation to prove that the unadjudicated parent is unfit before that parent is subject to the dispositional authority of the court. [*Id*. at 408.]

The Court then instructed:

[1] "Whether child protective proceedings complied with a parent's right to procedural due process presents a question of constitutional law, which we review de novo." *Sanders*, 495 Mich at 403-404.

> When the state is concerned that *neither* parent should be entrusted with the care and custody of their children, the state has the authority—and the responsibility—to protect the children's safety and well-being by seeking an adjudication against *both* parents. In contrast, when the state seeks only to deprive *one* parent of the right to care, custody and control, the state is only required to adjudicate *that* parent. [*Id*. at 421-422.]

This case involved three parent-respondents and three children. The three children were the biological offspring of respondent-mother. Respondent here is the biological father of one of the children. The father of the second child is unknown. The father of the third child was the third respondent (hereafter "other father").[2]

Respondent did not attend the adjudication hearing, but his attorney appeared. Mother and the other father were present. Mother admitted to several allegations in the petition. The other father then pleaded no contest to the allegations to which mother admitted. Respondent, being absent, did not enter a plea. However, his attorney told the court: "He is not here, but he would've—In my discussions with him last time, he would've entered a plea of no contest." The only allegation to which mother admitted that involved respondent in any way stated: "On or about March 17, 2013, [mother] stated that [respondent] was staying at his uncle's home and that the residence is not appropriate for [the instant child] to live, as it was described as 'unlivable.' " In taking jurisdiction over the children, the trial court stated in full:

> All right. I think based on that information, the Court could accept a plea [of] no contest from [the other father] and an admission for a plea from [mother]. And the Court, then, based on that, I think that would be sufficient for the Court to take jurisdiction of the children, under MCL 712A.2(b)(1) and 2(b)(2) as well.

The trial court plainly did not individually adjudicate respondent as an unfit parent as required under *Sanders*. Indeed, the court's ruling did not mention respondent at all. Respondent does not argue that his counsel was ineffective nor that she spoke against his wishes in declaring that he would not contest the allegations in the petition. However, his attorney's statement cannot constitute a plea. Even if it could, it is unclear whether the single allegation regarding respondent admitted to by mother could support the trial court finding respondent an unfit parent. In any event, resolution of that question is not required in this appeal. The trial court did not adjudicate respondent as an unfit parent as required under *Sanders*. As such, reversal is required.[3]

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[2] Neither respondent-mother nor the other father are party to this appeal.

[3] We note that there is no indication that petitioner or the trial court attempted to apply the one-parent doctrine. Nonetheless, the court's error was constitutional in nature and requires reversal regardless of its genesis or motivation.

Reversed and remanded for proceedings consistent with this opinion.[4] We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Douglas B. Shapiro
/s/ Amy Ronayne Krause

[4] Because we conclude that reversal is required under *Sanders*, we need not address respondent's other arguments concerning the statutory grounds for termination and the child's best interests.